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Attorneys for Defendants
*The Vanguard Group, Inc. and Vanguard
Marketing Corporation*

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Barbara Borchers and Jerald S. Chesler, as
Trustee of The Betty D. Olson Revocable
Trust, and The Olson Living Trust,

Plaintiffs,

v.

The Vanguard Group, Inc. and Vanguard
Marketing Corporation,

Defendants.

No. 08-02138-PHX-ROS

**ANSWER TO FIRST AMENDED
COMPLAINT**

Defendants The Vanguard Group, Inc. and Vanguard Marketing Corporation (collectively, "Vanguard") respond to the allegations in Plaintiffs Barbara Borchers and Jerald S. Chesler's Complaint as follows:

1. Vanguard states that it lacks knowledge sufficient to form a belief as to the truth of the allegations of Paragraph 1, and on that basis denies those allegations.

2. Vanguard states that it lacks knowledge sufficient to form a belief as to the

1 truth of the allegations of Paragraph 2, and on that basis denies those allegations.

2 3. The Vanguard Group, Inc. and Vanguard Marketing Corporation admit that
3 they are incorporated in Pennsylvania, that they are authorized to conduct business in
4 Arizona, and that they conduct business in Arizona. Vanguard states that the remaining
5 allegations of Paragraph 3 are vague, and on that basis deny the remaining allegations of
6 Paragraph 3.

7 4. Vanguard states that the Olson Living Trust opened and maintained certain
8 accounts with The Vanguard Group. Vanguard denies the remaining allegations of
9 Paragraph 4.

10 5. Vanguard states that it lacks knowledge sufficient to form a belief as to the
11 truth of the allegations of Paragraph 5, and on that basis denies those allegations. To the
12 extent that the allegations of Paragraph 5 are intended or have the effect of alleging any
13 wrongful conduct on the part of Vanguard, any such allegations are expressly denied.

14 6. Vanguard denies the allegations of Paragraph 6.

15 7. Vanguard denies the allegations of Paragraph 7.

16 8. Vanguard denies each and every allegation that is not specifically admitted
17 in paragraphs 1-7 above.

18 **Affirmative Defenses**

19 Vanguard states the following defenses to the causes of action asserted in the
20 Complaint without assuming the burden of proof where such a burden is otherwise on
21 Plaintiffs pursuant to applicable substantive procedural law. In addition, Vanguard notes
22 that Plaintiffs fail to identify any cognizable cause(s) of action in the First Amended
23 Complaint, and Vanguard is therefore not on notice of any causes of action that Plaintiffs
24 may intend to have alleged against Vanguard. As a result, Vanguard reserves the right to
25 assert additional affirmative defenses as discovery proceeds in this matter.

26 A. Plaintiffs' First Amended Complaint fails to state a claim upon which relief

1 may be granted.

2 B. Plaintiffs lack standing to assert claims against Vanguard.

3 C. Plaintiffs' claims are barred, in whole or in part, by the applicable statute(s)
4 of limitations and/or statutes of repose.

5 D. Plaintiffs' claims against Vanguard are barred because Plaintiffs were not
6 injured by reason of any action by Vanguard.

7 E. Plaintiffs' claims are barred in whole or in part by the doctrines of laches
8 and unclean hands.

9 F. Plaintiffs' claims are barred in whole or in part under Arizona's Uniform
10 Contribution Among Tortfeasors Act, A.R.S. § 12-2501, *et seq.* because any injury or
11 damages allegedly sustained by Plaintiffs were caused by or contributed to by Plaintiffs
12 themselves and/or other parties at fault and therefore should be apportioned to the
13 Plaintiffs and such other parties at fault.

14 G. Plaintiffs' claims are barred in whole or in part because Plaintiffs' claimed
15 injuries and damages were not legally or proximately caused by any acts or omissions of
16 Vanguard and/or were caused, if at all, by the conduct of third parties including, without
17 limitation, the prior, intervening or superseding conduct of such third parties.

18 H. Plaintiffs' claims are barred, in whole or in part, by Plaintiffs' failure to
19 mitigate damages and/or failure to take necessary steps to avoid preventable
20 consequences.

21 I. Plaintiffs' claims are barred, in whole or in part, by the applicable defenses
22 in Article 4, section 406 of the Uniform Commercial Code.

23 WHEREFORE, Vanguard requests that the Plaintiffs take nothing by their First
24 Amended Complaint, and that Vanguard be awarded judgment in this action in its favor,
25 its reasonable attorneys' fees and costs, and such other relief as the Court deems
26 appropriate.

1 Dated: February 18, 2010

PERKINS COIE BROWN & BAIN P.A.

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3 By:/s/ Jacob C. Robertson

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15 *Marketing Corporation*

CERTIFICATE OF SERVICE

☒ I hereby certify that on February 18, 2010, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrant(s):

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